

Hearing Scheduled: July 22, 2010 at 10:00 a.m.
Objection Deadline: June 7, 2010 at 4:00 p.m.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
	:	
DELPHI CORPORATION, <u>et al.</u> ,	:	Case No. 05-44481 (RDD)
	:	
	:	(Jointly Administered)
Debtors.	:	
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	:	
DELPHI CORPORATION, et al	:	
	:	
Plaintiff,	:	
	:	
v.	:	Adv. Proc. No. 07-02217-rdd
	:	
D&S MACHINE PRODUCTS, INC.,	:	
	:	
Defendant.	:	
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**D&S MACHINE PRODUCTS, INC.'S MOTION TO (A) VACATE CERTAIN PRIOR
ORDERS OF THE COURT; AND (B) DISMISS THE ADVERSARY PROCEEDING
COMPLAINT WITH PREJUDICE; OR (C) IN THE ALTERNATIVE, REQUIRE
PLAINTIFFS TO FILE A MORE DEFINITE STATEMENT**

Defendant D&S Machine Products, Inc. ("**D&S**" or "**Defendant**"), by its undersigned
attorneys, for its Motion to (A) Vacate Certain Prior Orders of the Court; and (B) Dismiss the

Adversary Proceeding Complaint with Prejudice; or (C) in the Alternative, Require Plaintiffs to File a More Definite Statement, rely on its accompanying memorandum of law (with attached exhibits) filed contemporaneously herewith.

WHEREFORE, Defendant seeks an order from the Court:

- Vacating certain interlocutory extension orders pursuant to the Court's discretionary authority because: (a) Debtors' failure to provide Defendant with meaningful notice of the motions seeking entry of the extension orders violates due process and renders the extension orders void and unenforceable against Defendant; (b) cause did not exist to extend the time for service of the Complaint; and/or (c) the Complaint was improperly filed under seal pursuant to 11 U.S.C. §107;
- Dismissing with prejudice the Complaint against Defendant, pursuant to Fed. R. Civ. P. 12(b)(6), made applicable by Fed. R. Bankr. P. 7012(b), on the ground that it: (a) is barred by the 2-year statute of limitations; and/or (b) does not comply with the pleading requirements of *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009);
- Dismissing the Complaint with prejudice on the grounds that it is barred by laches, judicial estoppel or res judicata;
- In the alternative, order Debtors to file a more definite statement with respect to its Complaint.

- Granting Defendant such other and further relief as is just and proper.

Respectfully submitted,

WARNER NORCROSS & JUDD LLP

Dated: May 14, 2010

By /s/ Michael B. O'Neal
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